

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the Matter of)
)
IP-Enabled Services) **WC Docket No. 04-36**
NOTICE OF PROPOSED RULEMAKING)
)

COMMENTS OF THE ARIZONA CORPORATION COMMISSION

I. Introduction

On March 10, 2004, the Federal Communications Commission (“FCC” or “Commission”) released a Notice of Proposed Rulemaking (“NPRM”) examining issues and seeking comments relating to services and applications making use of Internet Protocol (IP), including but not limited to Voice over IP (“VoIP”) services (collectively, “IP-enabled services”).¹ The Arizona Corporation Commission (“ACC” or “Arizona Commission”) appreciates the opportunity to offer comment in this Docket. The Arizona Commission has recently opened an investigatory Docket on VoIP.²

The NPRM notes that consideration of issues surrounding IP-enabled services and applications takes place within a legal framework comprised of statutory provisions and judicial precedent, prior Commission orders, ongoing Commission proceedings, and state actions relating to IP-enabled services and that an understanding of this legal context is important to ensuring full consideration of the issues raised. *Id.* at p. 17.

¹ The Commission defines VoIP technologies as “including those used to facilitate IP telephony, enable real-time delivery of voice and voice-based applications.” *In the Matter of Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, FCC 04-97 (April 21, 2004) (hereinafter referred to as “AT&T Declaratory Ruling”). “When VoIP is used, a voice communication traverses at least a portion of its communications path in an IP packet format using IP technology and IP networks. VoIP can be provided over the public Internet or over private IP networks. VoIP can be transmitted over a variety of media (e.g., copper, cable, fiber, wireless). . . . VoIP relies on packet-switching, which divides the voice transmission into packets and sends them over the fastest available route.” *Id.* at para. 5.

² See March 23, 2004 Letter from ACC Commissioner Kristin K. Mayes requesting Docket to be opened, an investigation commenced and comments submitted to the FCC.

While the ACC agrees that consideration of the existing legal framework is important, given the revolutionary nature of VoIP service, we believe too much focus on the existing legal and regulatory classifications, at the expense of critical policy issues which need to be resolved, may not be productive. While it is necessary to work within the existing legal framework, some individual information or VoIP applications may not fit neatly into one classification or the other. And, rigid adherence to regulatory classifications alone may not produce the right results in some cases. For instance, it is clear that application of the full panoply of Title II rules that have traditionally applied to copper-based, circuit-switched networks may not be appropriate for many forms of this nascent technology.

The Arizona Commission is not interested in “over-regulating” any service, and in particular a nascent service such as VoIP. We have a long standing position of promoting competition in the telecommunications industry. Nonetheless, there are important policy as well as consumer issues raised by the mass-marketing of IP telephony that must be addressed. Where VoIP is sold to consumers as a substitute for wireline phone service, health and safety issues must be addressed. Accordingly, we advocate a “light-handed” regulatory approach for most VoIP offerings which at the same time accounts for the reasonable expectations of consumers in obtaining a POTS substitute for their current wireline voice offering.

With respect to these health and safety issues, we urge the FCC to remain mindful of the significant state interest in ensuring affordable and reliable telephone service and the states’ traditional role in this regard, as well as the states’ proximity to the markets it regulates and its consumers. The states are the regulatory bodies on the “front line” so to speak and are the agencies that consumers call with service problems that arise. The states also have a significant interest in ensuring that advanced services, including DSL and other like services, are rolled out within their jurisdictions in a timely manner. As state regulators, we need to ensure that the health and safety of our citizens is protected

and that consumers have someone at the local level to contact with complaints. Public policy goals must be balanced against these significant state interests.

The ACC's comments are organized around the major issues presented in the FCC's NPRM: 1) categorizing IP-enabled services, 2) jurisdictional considerations, 3) the appropriate legal and regulatory framework and 4) other regulatory requirements.

II. Discussion

A. CATEGORIZING IP-ENABLED SERVICES

1. **IP-enabled Services and the Underlying Transmission Facilities should be Classified based Primarily upon the Functional Equivalence Approach and the Layers Approach Respectively.**

In Section II of its NPRM, the FCC sets out the existing legal framework with a discussion of statutory definitions and Commission precedent on VoIP and related issues. While such an analysis is necessary, we reiterate our belief that the lines between these classifications may blur at times and in those cases we believe that regulators should focus upon the functional equivalence of the service to telephone service and the reasonable health and safety expectations of consumers.

The existing legal framework is premised upon the distinction between "basic" and "enhanced" developed by the FCC in 1980 in its Second Computer Inquiry.³ In Computer II, the FCC defined "basic" service as transmission capacity for the movement of information without net change in form or content.⁴ By contrast, "enhanced" services

³ See *Regulatory and Policy Problems Presented by the Interdependence of Computer and Communication Services and Facilities*, Docket No. 16979, Notice of Inquiry, 7 FCC 2d 11 (1966) ("Computer I NOI"); *Regulatory and Policy Problems Presented by the Interdependence of Computer and Communication Services and Facilities*, Docket No. 16979, Final Decision and Order, 28 FCC 2d 267 (1971) ("Computer I Final Decision"); *Amendment of Section 64.702 of the Commission's Rules and Regulations* ("Second Computer Inquiry"), Docket No. 208928, *Tentative Decision and Further Notice of Inquiry and Rulemaking*, 72 FCC 2d 358 (1979) ("Computer II Tentative Decision"); *Amendment of Section 64.702 of the Commission's Rules and Regulations* ("Second Computer Inquiry"), Docket No. 20828, Final Decision, 77 FCC 2d 384 (1980) ("Computer II"); *Amendment of Section 64.702 of the Commission's Rules and Regulations* ("Third Computer Inquiry"), CC Docket No. 850229, Report and Order, 104 FCC 2d 958 (1986) ("Computer III") ("collectively the "Computer Inquiries").

⁴ *Computer II*, 77 F.C.C.2d at 419-22, paras. 93-99.

were defined as “services, offered over common carrier transmission facilities used in interstate communications, which (1) employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber’s transmitted information; (2) provide the subscriber additional, different or restructured information; or (3) involve subscriber interaction with stored information.”⁵

There is symmetry between the FCC’s Computer II definitions of basic/enhanced services and the 1996 Act’s definitions of “telecommunications” and “information service”. The term “telecommunications” is defined in 47 U.S.C. Section 153(43) as:

transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information sent and received.

On the other hand, “information service” is defined in 47 U.S.C. Section 153(20) as:

the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.⁶

In its 1998 Universal Service Report to Congress (hereinafter referred to as the “*Stevens Report*”), the FCC tentatively decided that, “computer-to-computer” IP telephony⁷ would likely not fall under the rubric of a “telecommunications service”.⁸

⁵ *Computer II*, 77 FCC2d at 420-21, para. 97.

⁶ In the *Non-Accounting Safeguards Order*, the FCC stated that an “information” service is similar to the definition of an enhanced service and that these services are generally services that result in a protocol conversion. Basic regulated services are comparable to the statutory term “telecommunications service”, which result in no net protocol conversion to the end user. See *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (“*Non-Accounting Safeguards Order*”).

⁷ “Computer-to-computer IP telephony uses a microphone, speakers, a sound card, software that provides access to the Internet and an Internet connection, preferably a fast connection such as a cable modem. Once addressed to the proper destination, the call travels over the Internet to the distant computer.” See, *Regulation on the Horizon: Are Regulators Poised to Address the Status of IP Telephony?*, by Cherie R. Kiser and Angela F. Collins, Catholic University of America CommLaw Conspectus, 2003.

⁸ *Stevens Report* at para. 87.

At the same time, it tentatively found that “phone-to-phone” IP telephony⁹ would likely qualify as “telecommunications” services. The FCC noted the following characteristics of “phone-to-phone” VoIP services:

- The provider holds itself out as providing voice telephony;
- The provider does not require the customer to use different customer premises equipment (“CPE”);
- The customer may call telephone numbers assigned in accordance with the North American Numbering Plan;
- The provider transmits customer information without any net change in form or content.¹⁰

Between these two ends of the spectrum, are IP enabled telephony services which utilize phones-to-computers or computers-to-phones.¹¹

Since the NPRM in this case was issued, the FCC has come out with two important decisions which are also relevant to this discussion and the issues raised in this proceeding. In its recently issued Pulver decision¹² the FCC found that the Company’s “Free World Dialup service” was an unregulated information service subject to federal jurisdiction. Order at p. 5.

In the second ruling,¹³ the Commission determined that AT&T’s routing of phone-to-phone traffic over its Internet backbone network did not transform that service into an “information” service exempting it from ordinary access charge obligations. In

⁹ “Phone-to-phone IP telephony may be provided using either the public Internet or a private IP-based network. In either of these situations, gateways must be used to allow the standard circuit-switched telephone to communicate with the packet-switched IP-based network or Internet.” See, *Regulation on the Horizon: Are Regulators Poised to Address the Status of IP Telephony?* By Cherie R. Kiser and Angela F. Collins, Catholic University of America CommLaw Conspectus 2003.

¹⁰ *Stevens Report* at para. 88.

¹¹ “Computer-to-telephone IP telephony is very similar to computer-to-computer IP telephony and likewise uses a microphone, speakers and a sound card. Computer-to-telephone IP telephony, however also requires special software so that the subscriber can place calls to individuals who may not have access to a computer. In addition, unlike computer-to-computer IP telephony, there may be a small per-minute charge for this feature.” See *Regulation on the Horizon: Are Regulators Poised to Address the Status of IP Telephony?*, Cherie R. Kiser, Angela F. Collins, Catholic University of America C ommLaw Conspectus 2003.

¹² *In the Matter of Petition for Declaratory Ruling that pulver.com’s Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order (Rel. February 19, 2004).

¹³ *In the Matter of Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order (Rel. April 21, 2004).

the AT&T case, the Commission found that AT&T was providing a telecommunications service because it was offering “telecommunications for a fee directly to the public.” AT&T Declaratory Order at para. 12.

Against this backdrop, in Part III of its NPRM, the FCC seeks comment on the appropriate classification of IP enabled telephony services. Six separate criteria are presented that may be used to classify IP-enabled telephony services and parties are asked to comment on their appropriateness. Those factors include: 1) functional equivalence to traditional telephony, 2) substitutability, 3) interconnection with the PSTN and use of the North American Numbering Plan, 4) peer-to-peer communications vs. network services, 5) facility layer vs. protocol layer vs. application layer, and 6) other grounds for classification.

The ACC believes that many of the criteria listed would be appropriate for consideration in determining the appropriate classification of IP-enabled telephony services. For the reasons discussed below, the ACC recommends that the Commission place primary emphasis on the “layers” approach which would separately recognize the “transmission component” as a telecommunications service combined with the “functional equivalence” approach which would look at the VoIP application from a “functional equivalence” perspective in order to determine the appropriate classification of the specific IP enabled service. The ACC believes that when used in combination, a more balanced regulatory approach and consumer oriented result can be obtained. In addition, use of these two criteria together would allow the FCC and states to accomplish many of the important public policy objectives identified in the FCC’s NPRM, including a light-handed regulatory approach for most IP enabled telephony services. Following is a short discussion of each of the classification criteria upon which the FCC seeks comment.

Functional equivalence to traditional telephony: The ACC believes that functional equivalence should be the primary consideration in determining how to

classify the services ultimately received by the end-user. As noted in the Stevens Report, the classification of a provider should not depend on the type of facilities used. The FCC stated at para. 59 of the *Stevens Report*:

This functional approach is consistent with Congress's direction that the classification of a provider should not depend on the type of facilities used. A telecommunications service is a telecommunications service regardless of whether it is provided using wireline, wireless, cable, satellite, or some other infrastructure. Its classification depends rather on the nature of the service being offered to customers. Stated another way, if the user can receive nothing more than pure transmission, the service is a telecommunications service. If the user can receive enhanced functionality, such as manipulation of information and interaction with stored data, the service is an information service. A functional analysis would be required even were we to adopt an overlapping definition of 'telecommunications service' and 'information service.'

Where the service received by the end-user is the functional equivalent of telephone service, it should be classified as such. However, mere classification of the IP enabled telephony services as a "telecommunications" service, does not mean that the full panoply of Title II regulations must apply. The ACC favors a "light handed" regulatory approach for most VoIP services so that competition and this nascent technology may continue to thrive. Such an approach is consistent with the position set forth in the NPRM that this proceeding is designed to "seek public comment on future decisions that would start from the premise that IP-enabled services are minimally regulated."¹⁴ The ACC's comments on the appropriate regulatory framework for IP-enabled services are discussed later in these comments.

Substitutability: Substitutability, which we view as closely related to the functional equivalence criteria, would be another appropriate consideration in determining how to classify a service offering. Substitutability and functional equivalence should also be considered in determining the extent to which regulations regarding public health and safety such as 911, E911, access for the disabled, CALEA,

¹⁴ NPRM at para. 5.

and Lifeline service. Where VoIP is sold to consumers as a substitute for wireline phone service, health and safety issues must be addressed.

Interconnection with the PSTN and Use of the North American Numbering Plan (“NANP”): The ACC believes that while these criteria should be considered along with the other criteria listed, interconnection with the PSTN should not alone be determinative of the ultimate classification. These factors point to functional equivalence or can be considered as part of that analysis. We note that use of NANP resources raises significant issues which we address in Part II.D.2.a below.

Peer-to-Peer Communications vs. Network Services: Again, the ACC believes that this factor should be considered along with the other criteria listed, but should not alone be determinative of the ultimate classification of the service.

Facility Layer vs. Protocol Layer vs. Application Layer: The ACC also believes the “layers approach” is ultimately very important in determining the regulatory classification(s) of the services provided. The layers must distinguish, at a minimum, between the underlying “transmission” facilities, and the services or applications that are ultimately provided to end-users using those facilities.

Use of the layers approach would appear to more appropriately balance the competing policy goals involved with the provision of VoIP and other IP enabled services. Use of the “layers” approach would allow regulation to be more focused on the components of the service where it is most appropriate or necessary and would avoid “over-regulation” at both the state and federal levels of the internet based applications layer. The ACC believes that the transmission component, under a layers approach, should continue to be classified as telecommunications subject to Title II and state regulation. In order for the internet based IP enabled telephony offerings to thrive, regulation needs to continue to recognize that ownership of facilities is important to the extent the facility owner is able to exert monopoly power. Again, the layers approach

would permit regulation to be more narrowly focused on the areas where there is the greatest need.

The underlying transmission component is not part of the internet but is part of the PSTN and recognition needs to be given to that fact. Simply because those transmission facilities are combined with an internet based information service should not result in the sudden transformation of the transmission facilities component into an “information” service. This makes effective regulation difficult and may ultimately result in “over-regulation” of the internet-based applications layer.

In summary, the ACC believes that most parties would agree that use of the FCC’s criteria would result in a determination that phone-to-phone VoIP is a “telecommunications” service. Indeed this is consistent with the FCC’s tentative conclusion five years ago in the *Stevens Report* that phone-to-phone IP telephony bears the characteristics of telecommunication service. *Id.* at p. 11544, para. 89.

With respect to phone-to-computer, computer-to-phone or computer-to-computer, the determination is more difficult but the ACC believes that the criteria set out by the FCC in its NPRM are suitable to make this determination, as discussed above. Ultimately, because of the variety in protocols and applications, examination of the various individual offerings may be necessary to ultimately determine their appropriate regulatory status. However, where phone-to-phone, phone-to-computer, computer-to-phone or computer-to-computer applications are the functional equivalent of telephone service, they should be classified as such. This would include services offered by such providers as Vonage. At the same time we recognize that the full panoply of Title II regulation designed for monopoly providers of the legacy circuit-switched network would not be appropriate for many VoIP services.

B. JURISDICTIONAL CONSIDERATIONS

1. Public Policy Considerations and Advances in Technology with IP Enabled Telephony Require a Fresh Look at The Jurisdictional Issue.

As the NPRM inherently recognizes, there are many competing policy considerations which must be appropriately balanced with respect to any regulation of IP enabled telephony services or the various layers which comprise this service.

For instance, the FCC noted at para. 3 of its NPRM, that it (as well as the states) recognizes that an important policy objective is the paramount importance of encouraging deployment of broadband infrastructure to the American people.

As broadband facilities have proliferated, communications services and networks have increasingly taken advantage of the efficiencies associated with translating data into data into IP packets running over the same network infrastructures. ...The increasing deployment of broadband facilities therefore has prompted the development of services and applications that provide broader functionality and greater consumer choice at prices competitive to those of analogous services provided over the public switched telephone network (PSTN).

This important policy consideration as well as others, including 1) allowing internet applications to thrive and 2) encouraging competition, must be balanced against other important public policy considerations including health and safety issues in which both the federal and state governments have a significant interest.

How a service is classified will necessarily impact to a great degree the jurisdictional nature of the service. As already discussed, we believe that the important public policy objectives with respect to these services can best be obtained with a regulatory approach which first recognizes the various layers or components of the service. However, the layers approach must be combined with a functional equivalence analysis at the applications layer. Where the application (some forms of VoIP) is functionally equivalent to telephone service, it should be classified as such.

Use of this approach will require some reevaluation by the FCC of several of its earlier jurisdictional determinations. Under the layers approach, the telecommunications

component of both cable modem and broadband internet access facilities would be separately recognized; and would appropriately be classified as a telecommunications services subject to regulation under Title II of the Communications Act.¹⁵ The ISP internet based applications would of course still be classified as information services subject to regulation under Title I of the Communications Act.

It also needs to be recognized that the evolution of VoIP service has already overtaken the applicability of several earlier jurisdictional determinations by the FCC. For instance, VoIP services are beginning to rapidly roll-out into the local markets, whereas before they were limited to long-distance and international service offerings.¹⁶

To date, however, VoIP services have been almost exclusively limited to long-distance and international service offerings. The trend is changing; both cable companies and telephone companies are beginning to rollout local exchange VoIP offerings as well. Accordingly, the technology advances driving the use of VoIP at the local level will create new regulatory challenges not previously explored and, in some instances, possibly beyond the reach of federal regulators.¹⁷

Given the changing nature of this traffic as VoIP services evolve, classification of DSL as an interstate telecommunications service is no longer appropriate.¹⁸ In addition, given the roll out of VoIP in the local market, and the fact that it will be used in many cases as a substitute for local calling, it certainly would not be appropriate to classify this service as a purely interstate telecommunications service or an interstate information service.

Finally, given the nature of this technology, continued use by the FCC of the traditional end-to-end approach in determining jurisdiction may also need to be reevaluated with regard to this new technology. It is clear that continued reliance on the

¹⁵ See, *Brand X Internet Services v. FCC*, 345 F.3d 1120 (9th Cir. 2003).

¹⁶ See *Regulation on the Horizon: Are Regulators Poised to Address the Status of IP Telephony?* By Cherie R. Kiser and Angela F. Collins, Catholic University of America CommLaw Conspectus 2003.

¹⁷ Id.

¹⁸ See *In the Matter of GTE Telephone Operating Cos.*, 11 FCC Rcd. 22,466, Memorandum Opinion and Order, FCC 98-292, (October 30, 1998). See also, *In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, Notice of Proposed Rulemaking (February 15, 2002).

end points of a call to determine its jurisdictional nature will not always produce the right result.

C. APPROPRIATE LEGAL AND REGULATORY FRAMEWORK

- 1. If the VoIP Service is Determined to be a Telecommunications Service, Regulatory Treatment of Such VoIP Services Should Be Light-Handed Although at the Same Time Recognize the Reasonable Expectations of Consumers Where the Service Can be Used as a Substitute to Wireline Voice Offerings.**

The ACC concurs with the FCC's stated starting point in this proceeding, i.e., from the premise that IP-enabled services be minimally regulated. NPRM at para. 5. However, public health and safety issues cannot be ignored.

ACC Chairman Marc Spitzer recently stated in a letter regarding this subject:

Government, federal and state, wisely determined not to impose regulation upon the nascent internet technology. Instead, government permitted the technology to thrive and apply regulation on an as-needed basis. I believe that model of light but effective regulation is appropriate for VoIP.

There are important policy as well as consumer issues raised by the mass-marketing of IP telephony. Where VoIP is sold to consumers as a substitute for wireline phone service, health and safety issues must be addressed.

ACC Commissioner Gleason in another recent letter regarding this topic also concurred that:

...[T]he Comments this Commission submits to the FCC should focus on public policy and not get bogged down by analyzing the new technology under the rubric of old law. As Senator John Sununu said in the April 5, 2004 article in Telephone Online, 'It would be a mistake to take the legislative provisions written for copper-based, circuit-switched networks and apply them to this new technology.'

In this regard, the FCC sought comment that "[t]o the extent the market for IP-enabled services is not characterized by such monopoly conditions, whether there is a compelling rationale for applying traditional economic regulation to providers of IP-enabled services." NPRM at para. 5. In most instances, the ACC believes there is no compelling rationale to apply traditional economic regulation to providers of IP-enabled

services at this time.¹⁹ A carrier, however, should not be exempted from state or Title II regulation where it is merely using the IP network, in full or in part, to route traffic from and back onto the PSTN. A carrier should not be avoid it's Title II obligations due solely to the fact that it chooses to route some of its traffic over the IP network. This is consistent with the recent *AT&T* decision.

With respect to phone-to-computer and computer-to-phone and other applications that are the functional equivalent of POTS, there would appear to be no compelling need to rate regulate most of these services at this time. The regulations of many state commissions, including Arizona, for competitive carriers are already quite relaxed and do not at all resemble the regulations applicable to the monopoly incumbent wireline providers in the state.²⁰ To the extent regulation is imposed at this early stage, it should be to address important public health, safety and consumer protection concerns when VoIP is the functional equivalent of and may be used as a substitute for wireline telephone service.

2. To the Extent that VoIP services Are Functionally Equivalent to Voice Wireline Service Or May Act as a Substitute for Wireline or Wireless Telephone Service, the ACC believes that public safety, health and welfare concerns require that VoIP providers, at a minimum, comply with 911/E911, Disability Access, CALEA and CPNI Requirements.

a. 911/E911 and Public Safety Considerations

The public has come to expect that, during an emergency, dialing 911 from a phone will allow the caller to reach a Public Service Answering Point (“PSAP”) and request assistance. Regardless of how other issues relating to VoIP are ultimately resolved, public safety considerations demand that the ubiquity of 911 service must not

¹⁹In his May 26, 2004 Letter, Commissioner Mike Gleason also stated: “Regulation is appropriate to protect consumers from over reaching utilities and to ensure they receive good service. To date, we have no evidence of corporate misconduct or unhappy and stranded customers. Regulation at this early stage runs the risk of stifling or retarding the growth of this industry without a corresponding public benefit”.

²⁰ See, *Order Establishing Balanced Regulatory Framework for Vonage Holdings Corporation*, Case 03-C-1285 (May 21, 2004).

be compromised. It should not be assumed that, during a crisis, the initiator of a 911 call, be it a child, a babysitter, the elderly or other users of a phone can discern the underlying technology that is providing service to the phone being used and make a conscious decision to use a different phone just because the closest, or possibly only one, is VoIP based and may not be 911 capable. Further, given the fact that VoIP service can be portable, the initiator of a 911 call may not be aware that the call is being originated at an address different from the primary service address associated with the telephone number.

The ACC believes that where a voice communication service is marketed as a substitute for or has the appearance of traditional wireline voice service, the regulatory requirements for provision of 911 service should be consistently applied on a technology neutral basis. This is particularly true where the technology makes use of North American Numbering Plan numbers and can complete voice calls to and from the PSTN. Further, the FCC should consider a requirement that a VoIP provider's 911 service be functional, in a manner acceptable to the applicable PSAP(s), prior to that provider's entry into a new market. The ability to make a VoIP 911 call should not be dependent upon the customer having to make an affirmative selection for such capability. Full 911 capability should be inherent to the VoIP service offering, equivalent to existing local exchange service, and not presented as an optional feature. While terms of service agreements or service provider websites might offer disclaimers or cautions regarding 911 capabilities, such disclaimers are of no comfort to the person who dials 911 from a VoIP phone in an emergency and the call fails because 911 service was not initially requested for the line. The potential consequences from the unavailability of 911 service in regards to loss of life, severe injury or property damage, for example, are simply too great to be overlooked or minimized just because a new technology is emerging.

The ACC recognizes that VoIP providers are voluntarily working with the National Emergency Number Association ("NENA") to resolve the technical issues that must be addressed so that 911/E911 via VoIP is, at a minimum, as full featured and

dependable as is present in the PSTN today. While the ACC commends this industry effort, it also believes that the ability of a VoIP customer to make a 911/E911 call is such an important public safety issue that its availability to VoIP customers should not solely be based upon good intentions and voluntary effort by service providers. Rather, existing 911/E911 regulation should be applied in a consistent manner to all new emerging technologies.

b. **Communications Assistance for Law Enforcement Act (“CALEA”)**

The ability of law enforcement agencies to perform their duties in protecting public safety and national security should not be endangered by the emergence of new technologies such as VoIP. The requirements of CALEA should be extended to VoIP service providers and equipment manufacturers so these agencies have the necessary access to the national communications infrastructure to perform their critical role.

It appears there are many complex technological issues to be resolved and standards to be developed and implemented. It is imperative that law enforcement agencies have the necessary wiretap capabilities available to them and processes are in place to insure compliance with these needs. The ACC supports the FCC decision to open an independent rulemaking proceeding to address this important subject.

c. **Public Safety and Disability Access**

The ACC also supports the application of disability access provisions of Title 47 to VoIP services. See 47 C.F.R. 255 and 251(a)(2).

D. OTHER REGULATORY REQUIREMENTS

1. **CPNI Requirements**

Customer Proprietary Network Information (“CPNI”) and how it will be protected with VoIP calls is another important consumer protection issue. Customers must be educated on the privacy concerns associated with VoIP. Traditional CPNI requirements should apply to the extent that the service is functionally equivalent to wireline telephone

service. Arizona consumers have demonstrated great concern over release of their CPNI. The Arizona Commission is currently engaged in a rulemaking concerning CPNI to protect consumers' privacy in Arizona. A consumer will have the same legitimate expectation of privacy with regard to their calls placed over an IP Platform. The underlying technology should make no difference with regard to privacy issues.

2. The ACC proposes continued investigation into numbering resource questions that are of major importance to all telecommunications providers and end users.

a. North American Numbering Plan and Related Issues

VoIP service offerings that make use of NANP telephone numbers raise a variety of important issues that must be addressed. The FCC should address substantially more questions than those contained within the NPRM. State commissions, working in concert with the FCC, have made significant progress in improving the utilization of telephone numbers with the result that the life of the NANP has been extended. Inherent in this is also an understanding that slowing down the exhaustion of area codes provides significant benefits to the public. As new technologies and services that make use of the NANP telephone numbers enter the marketplace, the manner in which regulation is applied or not applied must insure that the progress that has been made in number optimization is in no way diminished.

Following is a list of key questions that should be addressed by the FCC. The questions suggest areas where additional analysis may be appropriate. The questions are focused on those VoIP service offerings which utilize NANP telephone numbers.

- 1) Should the VoIP provider be allowed to obtain telephone numbers directly from the North American Number Plan Administrator ("NANPA")?
- 2) What criteria should be met by the VoIP provider if it were to be allowed to obtain telephone numbers directly from the NANPA?
- 3) Should the FCC's number optimization rules be applicable to such a VoIP service provider?

- 4) Should the FCC's local number portability ("LNP") rules be application to such a provider?
- 5) Should the FCC's rules regarding N11 be applicable to such a provider?
- 6) What other FCC rules applicable to numbering should be applied to such a provider?
- 7) To what extent, if any, must such a VoIP provider assign numbers consistent with how a state commission has defined a local calling area?
- 8) Related to the above, should such a VoIP provider be allowed to assign telephone numbers independent of any consideration of the customer's primary physical address?
- 9) Related to the above, are there similarities to wireline virtual NXX ("VNXX") issues that should be reconciled?
- 10) How might regulatory differences in how competing technologies are allowed to assign telephone numbers lead to an "unbalanced playing field"? For example, could variation in a service provider's ability to provide a customer the ability to select and/or retain telephone numbers across local calling areas, area codes or state boundaries lead to unexpected competitive consequences and the favoring of an emerging technology in relation to an embedded one?
- 11) What are the impacts (loss of toll revenue or access fees for example) that may result from VoIP service providers offering virtual telephone numbers (which may be anywhere in the country)? What is the best manner in which to address these impacts?

Given the complexity of issues surrounding numbering, the ACC recommends that the FCC open a new rulemaking to specifically address the impact of IP-enabled services on numbering resources and the North American Numbering Council be directed to make specific recommendations to the FCC.

c. To the Extent VoIP Providers (or the Underlying Facilities Provider) Utilize the PSTN, they Should be Treated Like Other Telecommunications Providers with Respect to Intercarrier Compensation Obligations and USF Support.

The ACC believes that access charges and intercarrier obligations should be imposed on VoIP providers interconnecting to the PSTN in a similar manner as access charges and intercarrier obligations are imposed on providers of wireline services under the jurisdiction of the ACC.

The ACC believes that, in the event the FCC decides not to impose access charges and intercarrier obligations directly on VoIP providers, appropriate access charges and intercarrier obligations should be imposed on the underlying network provider (CLECs, ILECs, Wireless providers, etc) responsible for VoIP traffic that terminates or originates on the PSTN.

VoIP services will utilize and therefore need to support PSTN resources. The ACC supports the FCC's position - "As a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways."²¹

With regard to the impact of VoIP on rural services – Access charge payments typically represent a large portion of intrastate revenue for small, rural local exchange carriers in Arizona. Revenue from access charges helps maintain affordable rates for telephone service in high-cost rural areas of the state." Small rural ILECs stand to lose significant access revenue to VoIP in the future.

Yet, inequities in the current intercarrier compensation system are apparent. Depending upon how a call is classified, charges differ even though from a network or technology perspective there is no difference. For example, if a call is routed through an

²¹ NPRM FCC 04-36

IXC to an end-user via access service facilities that are connected to its interexchange carrier arm, the call is assessed minute-of-use based access charges. If that same carrier routes a call to an end-user via facilities that are connected to its internet service provider arm, no minute-of-use based charges apply.

VoIP is an application that in many instances uses the PTSN. The FCC should not exempt certain services that utilize the PSTN from charges that are assessed on equivalent services of other providers. The ACC is aware that the FCC has a docket open to address the current intercarrier scheme with the focus being to rectify some of the inequities inherent in the current system.

Finally, USF contributions should also be required from all services that are classified as telecommunications services. Universal service is one of the “fundamental goals” of telecommunications regulation. VoIP providers should be required to contribute, just as other telecommunications providers. The FCC should direct the Federal-State Joint Board for Universal Service to review VoIP issues. As an interim measure, VoIP providers that provide service functionally equivalent to POTS should be required to make the same USF contributions they would owe if they were wireline carriers. In lieu of this, the FCC should require the underlying broadband provider to make these contributions. At some point, the FCC should consider whether information service providers should be required to contribute to the USF.

III. Conclusion

The ACC believes that IP enabled telephony services which are the functional equivalent of existing telephone service should be classified as such. The ACC would favor a light handed regulatory approach for some forms of VoIP services, given the nascent stage of the service at this time. Preemption of state jurisdiction over VoIP services would be inappropriate given the significant state interest in ensuring adequate and reliable telecommunications services.

Respectfully submitted,

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